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No. 83-960

In the Supreme Court of the United States

OCTOBER TERM, 1983

GILES GALAHAD, PETITIONER

v.

ZITA L. WEINSHIENK, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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1. Petitioner failed the examination for admission to the bar of the State of Colorado. He then applied for admission to the bar of the United States District Court for the District of Colorado. His application was denied because he did not satisfy the qualifications for admission set forth in the district court's Local Rule 1(a), which required that applicants be admitted to practice in the courts of the State of Colorado (Pet. App. 1002, 1018).[1] Petitioner then brought these actions in the United States District Court for the District of Colorado.

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[1]The district court's local rules have been amended effective February 1, 1984. Local Rule 300 now governs admission to the district court bar. Like former Rule 1(a), it restricts admission to "persons admitted to practice in the courts of the State of Colorado."

In one action petitioner sued the members of the Colorado State Board of Law Examiners and of the Colorado Supreme Court, challenging the state bar admission procedures and grading system, and seeking admission to the State bar. In a separate action petitioner sued the federal district judges for the District of Colorado, challenging on constitutional and other grounds the district court's Local Rule 1(a). Petitioner's claims were rejected in both actions.

Petitioner asserted in the court of appeals that he had been admitted to the bars of Alaska and Pennsylvania, and that Colorado and the federal district court in that State were required to give full faith and credit to those prior judicial determinations. See U.S. Const. Art. IV, § 1; 28 U.S.C. 1738. The cases were consolidated. The court of appeals, after concluding that it had jurisdiction to consider petitioner's claim, affirmed in a brief per curiam opinion. Pet. App. 1001-1004.

ARGUMENT

The court of appeals' decision in plainly correct, and consistent with the decisions of this Court and the other courts of appeals. It does not warrant further review.

1. We assume that the court of appeals properly concluded that it had jurisdiction to consider petitioner's claim. The denial of admission to the bar of a federal district court is itself reviewable on direct appeal to the court of appeals.[2] See *In re Dreier*, 258 F.2d 68, 69 n.1 (3d Cir. 1958); *In re Braverman*, 549 F.2d 913 (4th Cir. 1976). This Court held in

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[2]After petitioner's application for admission to the federal district court was denied, he first sought mandamus from the court of appeals directing Judge Weinshienk to grant his application. His mandamus petition was denied. *In re Galahad*, No. 81-1782 (10th Cir. Oct. 16, 1981), cert. denied, 454 U.S. 1139 (1982).

District of Columbia Court of Appeals v. *Feldman*, No. 81-1335 (Mar. 23, 1983), however, that "a general attack on the constitutionality of [a r]ule" governing bar admissions does "not require review of a judicial decision in a particular case" (slip op. 25). A federal district court therefore has subject matter jurisdiction to consider such a claim even if the plaintiff was denied admission in an earlier proceeding. This principle would seem to apply in cases dealing with federal court admissions as well as state court admissions. In this case petitioner's complaint could be read as attacking D. Colo. Local Rule 1(a) as a violation of full faith and credit and of 28 U.S.C. 1738 insofar as it required those admitted to the bar outside Colorado to pass the Colorado bar examination.[3]

2. Petitioner's claim that the Full Faith and Credit Clause (U.S. Const. Art. IV, § 1) and 28 U.S.C. 1738 have some bearing on the validity of Local Rule 1(a) is frivolous. The Full Faith and Credit Clause does not apply to the federal courts. *Migra* v. *Warren City School District Board of Education*, No. 82-738 (Jan. 23, 1984), slip op. 5; *Davis* v. *Davis*, 305 U.S. 32, 40 (1938). 28 U.S.C. 1738 does require the federal courts to give "the same full faith and credit" to the "judicial proceedings" of another state "as they have by law or usage in the courts of such State." But by refusing admission to the federal district court in Colorado, the federal court there did not fail to recognize or

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[3]Though we assume that the district court had subject matter jurisdiction, petitioner's claim that Local Rule 1(a) is invalid should be barred as a matter of res judicata by the earlier denial of his motion for admission. We perceive no reason why the issue now presented could not also have been litigated in connection with that earlier motion (and thereafter appealed to the court of appeals). See Restatement (Second) of Judgments § 25 (1982). The defense of res judicata was raised by the federal respondents, but the district court did not address it in its opinion.

enforce the earlier state court determinations admitting petitioner to the bars of Alaska and Pennsylvania. Those determinations are simply not binding (as a matter of res judicata and full faith and credit) on nonparties litigating a different question in the federal courts of another state.

The Colorado federal and state courts did not participate in the Alaska and Pennsylvania admissions proceedings. Contrast *Montana* v. *United States*, 440 U.S. 147, 153-155 (1979). They are thus not bound by the outcome of those proceedings in different actions brought by the formerly successful movant. Moreover, the issue determined in the earlier state proceedings (whether petitioner possessed the necessary qualifications for admission to the bars of those states) is different from the issue petitioner asserts is precluded here (whether he satisfies the requirements for admission to the state and federal bars in Colorado). *Leis* v. *Flynt*, 439 U.S. 438 (1979). For that reason, as this Court has made clear, "the Constitution does not require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another" (*id.* at 443). The same is true of admission to practice in the federal courts. See *In re Wasserman*, 240 F.2d 213, 214-215 (9th Cir. 1956); *In re Roberts*, 682 F.2d 105, 109 (3d Cir. 1982); *In re Rappaport*, 558 F.2d 87, 89 (2d Cir. 1977).[4]

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[4]Petitioner argued in the district court that the judges of that court, by adopting Local Rule 1(a), had violated the Sherman Act (15 U.S.C. 1 *et seq.*). Pet. App. 1037-1042. This claim is similar in some ways to the one before the Court in *Hoover* v. *Ronwin*, No. 82-1474 (argued Jan. 16, 1984). Petitioner, however, has sued the members of the court for adoption of a rule. Ronwin, by contrast, sued the state bar examiners for limiting admissions in a way not authorized by the state supreme court. See *Feldman* v. *Gardner*, 661 F.2d 1295, 1303-1308 (D.C. Cir. 1981), rev'd on other grounds, No. 81-1335 (Mar. 23, 1983).

The district court rejected petitioner's claim (Pet. App. 1037-1042), and petitioner has not pursued it either in the court of appeals or in this Court. There is thus no reason why action on this petition should be delayed pending the Court's decision in *Hoover* v. *Ronwin*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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